it has been clearly established the single fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation.

When an Agency finds that a lender's policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. Finally, evidence of *discriminatory intent* is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FHAct or ECOA.

These procedures do not call for examiners to plan examinations to identify or focus on potential disparate impact issues. The guidance in this section is intended to help examiners recognize potential disparate impact situations if they happen to encounter them. Guidance in the **Appendix** tells them how to obtain relevant information regarding such situations and how to evaluate and follow up on it, as appropriate.

General Guidelines

These procedures are intended to be a basic and flexible framework to be used in the majority of fair lending examinations conducted by the FFIEC agencies. They are also intended to guide examiner judgment, not to supplant it. The procedures can be augmented by each agency, which can supply such additional procedures and details as are necessary to implement them effectively.

Although these procedures will apply to most examinations, each agency may continue to use for limited numbers of examinations the distinct approaches it has developed that are appropriate for select classes of institutions. Such approaches include, for example, the statistical modeling that some of the agencies use in selected examinations to assist in determining whether race or national origin was a factor in credit decisions.

For a number of aspects of lending—for example, credit scoring and loan pricing—the "state of the art" is more likely to be advanced if the agencies have some latitude to incorporate promising innovations. These interagency procedures provide for that.

Any references in these procedures to options, judgment, etc., of "examiners" means discretion within the limits provided by that examiner's agency. An examiner should use these procedures in conjunction with his or her own agency's priorities, examination philosophy, and detailed guidance for implementing these procedures. These procedures should not be interpreted as providing an examiner greater latitude than his or her own agency would. For example, if an agency's policy is to review compliance management systems even in small banks, an examiner for that agency must conduct such a review rather than interpret Part II of these interagency procedures as leaving the review to the examiner's option.

The procedures emphasize racial and national origin discrimination in residential transactions, but the key principles can be applied to other prohibited bases and to nonresidential transactions.

Finally, these procedures focus on analyzing lender compliance with the broad, nondiscriminatory requirements of the ECOA and the FHAct. They do not address such explicit or technical compliance provisions as the signature rules or adverse action notice requirements in sections 202.7 and 202.9, respectively, of Regulation B.

Part I—Examination Scope Guidelines

Background

The **scope** of an examination encompasses the loan product(s), market(s), decision center(s), time frame, and prohibited basis and control group(s) to be analyzed during the examination. These procedures refer to each potential combination of those elements as a "**Focal Point**." Setting the scope of an examination involves, first, identifying all of the potential focal points that appear worthwhile to examine. Then, from among those, examiners select the focal point(s) that will form the scope of the examination, based on risk factors, priorities established in these procedures or by their respective agencies, the record from past examinations, and other relevant guidance. This phase includes obtaining an overview of an institution's compliance management system as it relates to fair lending.

When selecting focal points for review, examiners may determine that the institution has performed "self-tests" or "self-evaluations" related to specific lending products. The difference between "self tests" and "self evaluations" is discussed in the Streamlining the Examination section of the Appendix. Institutions must share all information regarding "self-evaluations" and certain limited information related to "self-tests." Institutions may choose to voluntarily disclose additional information about "self-tests." Examiners should make sure that institutions understand that voluntarily sharing the results of self-tests will result in a loss of confidential status of these tests. Information from "self-evaluations" or "self-tests" may allow the scoping to be streamlined. Refer to the *Streamlining the Examination* section of the **Appendix** for additional details.

Scoping may disclose the existence of circumstances—such as the use of credit scoring or the amount of residential lending—which, under an agency's policy, call for the use of regression analysis or other statistical methods of identifying potential discrimination with respect to one or more loan products. Where that is the case, the agency's specialized procedures should be employed for such loan products rather than the procedures set forth below.

Setting the **intensity** of an examination means determining the breadth and depth of the analysis that will be conducted on the selected loan product(s). This process entails a more involved analysis of the institution's compliance risk management processes, particularly as it relates to selected products, to reach an informed decision regarding how large a sample of files to review in any transactional analyses performed and whether certain aspects of the credit process deserve heightened scrutiny.

Part I of these procedures provides guidance on establishing the scope of the examination. Part II — Compliance Management Review — provides guidance on determining the intensity of the examination. There is naturally some interdependence between these two phases. Ultimately the scope and intensity of the examination will determine the record of performance that serves as the foundation for agency conclusions about institutional compliance with fair lending obligations. The examiner should employ these procedures and the organization of these guidelines to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution's examination of fair lending performance.

In cases where information already in the possession of an agency provides examiners with guidance on priorities and risks for planning an upcoming examination, such information may expedite the scoping process and make it unnecessary to carry out all of the steps below. For example, the report of the previous fair lending examination may have included recommendations for the focus of the next examination.

The scoping process can be performed either off-site, on-site, or both, depending on whatever is determined most feasible. In the interest of minimizing burdens on both the examination team and the lender, requests for information from the institution should be carefully thought out so as to include only the information that will clearly be useful in the examination process. Finally, any off-site information requests should be made sufficiently in advance of the on-site schedule to permit institutions adequate time to assemble necessary information and provide it to the examination team in a timely fashion. (*See* the **Appendix** on "**Potential Scoping Information**" for guidance on additional information that the examiner might wish to consider including in a request).

Examiners should focus the examination based on:

- An understanding of the credit operations of the institution;
- The risk that discriminatory conduct may occur in each area of those operations; and
- The feasibility of developing a factually reliable record of an institution's performance and fair lending compliance in each area of those operations.

Understanding Credit Operations

Before evaluating the potential for discriminatory conduct, the examiner should review sufficient information about the institution and its market to understand the credit operations of the institution and the representation of prohibited basis group residents within the markets where the institution does business. The level of detail to be obtained at this stage should be sufficient to identify whether any of the risk factors in the steps below are present. Relevant background information includes:

- The types and terms of credit products offered, differentiating among residential, consumer and other categories of credit.
- The volume of, or growth in, lending for each of the credit products offered.
- The demographics (i.e., race, national origin, etc.) of the credit markets in which the institution is doing business.
- The institution's organization of its credit decision-making process, including identification of the delegation of separate lending authorities and the extent to which discretion in pricing or setting credit terms and conditions is delegated to various levels of managers, employees or independent brokers or dealers.
- The types of relevant documentation/data that are available for various loan products and what is the relative quantity, quality and accessibility of such information. (i.e., for which loan product(s) will the information available be most likely to support a sound and reliable fair lending analysis.)
- The extent to which information requests can be readily organized and coordinated with other compliance examination components to reduce undue burden on the institution. (Do not request more information than the exam team can be expected to utilize during the anticipated course of the examination.)

In thinking about an institution's credit markets, the examiner should recognize that these markets may or may not coincide with an institution's CRA assessment area(s). Where appropriate, the examiner should review the demographics for a broader geographic area than the assessment area.

Where an institution has multiple underwriting or loan processing centers or subsidiaries, each with fully independent credit-granting authority, consider evaluating each center and/or subsidiary separately, provided a sufficient number of loans exist to support a meaningful analysis. In determining the scope of the examination for such institutions, examiners should consider whether:

- Subsidiaries should be examined. The agencies will hold a financial institution responsible for violations by its direct subsidiaries, but not typically for those by its affiliates (unless the affiliate has acted as the agent for the institution or the violation by the affiliate was known or should have been known to the institution before it became involved in the transaction or purchased the affiliate's loans). When seeking to determine an institution's relationship with affiliates that are not supervised financial institutions, limit the inquiry to what can be learned in the institution and do not contact the affiliate.
- The underwriting standards and procedures used in the entity being reviewed are used in related entities not scheduled for the planned examination. This will help examiners to recognize the potential scope of policy-based violations.
- The portfolio consists of applications from a purchased institution. If so, for scoping purposes, examiners should consider the applications as if they were made to the purchasing institution. (For comparison purposes, applications evaluated under the purchased institution's standards should not be compared to applications evaluated under the purchasing institution's standards.)
- The portfolio includes purchased loans. If so, examiners should look for indications that the institution specified loans to purchase based on a prohibited factor or caused a prohibited factor to influence the origination process.
- A complete decision can be made at one of the several underwriting or loan processing centers, each with independent authority. In such a situation, it is best to conduct on-site a separate comparative analysis at each underwriting center. If covering multiple centers is not feasible during the planned examination, examiners should review one during the planned examination and others in later examinations.
- Decision-making responsibility for a single transaction may involve more than one underwriting center. For example, an institution may have authority to decline mortgage applicants, but only the mortgage company subsidiary may approve them. In such a situation, examiners should learn which standards are applied in each entity and the location of records needed for the planned comparisons.
- Any third parties, such as brokers or contractors, are involved in the credit decision and how responsibility is allocated among them and the institution. The institution's familiarity with third party actions may be important, for a bank may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

If the institution is large and geographically diverse, examiners should select only as many markets or underwriting centers as can be reviewed readily in depth, rather than selecting proportionally to cover every market. As needed, examiners should narrow the focus to the MSA or underwriting center that is determined to present the highest discrimination risk. Examiners should use LAR data organized by underwriting center, if available. After calculating denial rates between the control group and minorities for the underwriting centers, examiners should select the centers with the highest disparities. If underwriting centers have fewer than five black, Hispanic, or Native American denials, examiners should not examine for racial discrimination. Instead, they should shift the focus to other loan products or prohibited bases.

Evaluating the Potential for Discriminatory Conduct

Step One: Develop an Overview

Based on his or her understanding of the credit operations and product offerings of an institution, an examiner should determine the nature and amount of information required for the scoping process and should obtain and organize that information. No single examination can reasonably be expected to evaluate compliance performance as to every prohibited basis, in every product, or in every underwriting center or subsidiary of an institution. In addition to information gained in the process of Understanding Credit Operations above, the examiner should keep in mind the following factors when selecting products for the scoping review:

- Which products and prohibited bases were reviewed during the most recent prior examination(s) and, conversely, which products and prohibited bases have not recently been reviewed?
- Which prohibited basis groups make up a significant portion of the institution's market for the different credit products offered?
- Which products and prohibited basis groups the institution reviewed using either a voluntarily disclosed self-test or a self-evaluation?

Based on consideration of the foregoing factors, the examiner should request information for all residential and other loan products considered appropriate for scoping in the current examination cycle. In addition, wherever feasible, examiners should conduct preliminary interviews with the lender's key underwriting personnel. Using the accumulated information, the examiner should evaluate the following, as applicable:

- Underwriting guidelines, policies, and standards.
- Descriptions of credit scoring systems, including a list of factors scored, cutoff scores, extent of validation, and any guidance for handling overrides and exceptions. (Refer to Part A of the Credit Scoring Analysis section of the **Appendix** for guidance.)
- Applicable pricing policies and guidance for exercising discretion over loan terms and conditions.
- The institution's corporate relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions.
- Loan application forms.
- HMDA/LAR or loan registers and lists of declined applications.
- Description(s) of databases maintained for loan product(s) to be reviewed, especially any record of exceptions to underwriting guidelines.
- Copies of any consumer complaints alleging discrimination and loan files related thereto.
- Descriptions of any compensation system that is based on loan production or pricing.
- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping and any monitoring protocols.
- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs.

Step Two: Identify Compliance Program Discrimination Risk Factors

Review information from agency examination work papers, institutional records and any available discussions with management representatives in sufficient detail to understand the organization, staffing, training, recordkeeping, auditing and policies of the institution's fair lending compliance systems. Review these systems and note the following risk factors:

C1. Overall institution compliance record is weak.

C2. Prohibited basis monitoring information is incomplete.

C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.

C4. Fair lending problems were previously found in one or more bank products.

C5. The size, scope, and quality of the compliance management program, including senior management's involvement, is materially inferior to programs customarily found in institutions of similar size, market demographics and credit complexity.

C6. The institution has not updated compliance guidance to reflect changes in law or in agency policy.

Consider these risk factors and their impact on particular lending products and practices as you conduct the product specific risk review during the scoping steps that follow. Where this review identifies fair lending compliance system deficiencies, give them appropriate consideration as part of the Compliance Management Review in Part II of these procedures.

Step Three: Review Residential Loan Products

Although home mortgages may not be the ultimate subject of every fair lending examination, this product line must at least be considered in the course of scoping every institution that is engaged in the residential lending market.

Divide home mortgage loans into the following groupings: home purchase, home improvements, and refinancings. Subdivide those three groups further if an institution does a significant number of any of the following types or forms of residential lending, and consider them separately:

- Government-insured loans
- Mobile home or factory housing loans
- Wholesale, indirect and brokered loans
- Portfolio lending (including portfolios of Fannie Mae/ Freddie Mac rejections)

In addition, determine whether the lender offers any conventional "affordable" housing loan programs and whether their terms and conditions make them incompatible with regular conventional loans for comparative purposes. If so, consider them separately.

If previous examinations have demonstrated the following, then an examiner may limit the focus of the current examination to alternative underwriting or processing centers or to other residential products that have received less scrutiny in the past:

- A strong fair lending compliance program.
- No record of discriminatory transactions at particular decision centers or in particular residential products.
- No indication of a significant change in personnel, operations or underwriting standards at those centers or in those residential products.
- No unresolved fair lending complaints, administrative proceedings, litigation or similar factors.

Step Four: Identify Residential Lending Discrimination Risk Factors

- Review the lending policies, marketing plans, underwriting, appraisal and pricing guidelines, broker/agent agreements and loan application forms for each residential loan product that represents an appreciable volume of, or displays noticeable growth in, the institution's residential lending.

- Review also any available data regarding the geographic distribution of the institution's loan originations with respect to the race and national origin percentages of the census tracts within its assessment area or, if different, its residential loan product lending area(s).
- Conduct interviews of loan officers and other employees or agents in the residential lending process concerning adherence to and understanding of the above policies and guidelines as well as any relevant operating practices.
- In the course of conducting the foregoing inquiries, look for the following risk factors (factors are numbered alphanumerically to coincide with the type of factor, e.g., "O" for "overt"; "P" for "pricing", etc.):

***Overt** indicators of discrimination such as:*

O1. Including explicit prohibited basis identifiers in underwriting criteria or pricing standards.

O2. Collecting information, conducting inquiries or imposing conditions contrary to express requirements of Regulation B.

O3. Including variables in a credit scoring system that constitute a basis or factor prohibited by Regulation B or, for residential loan scoring systems, the FHAct. (If a credit scoring system scores age, refer to the Credit Scoring Analysis section of the **Appendix**.)

O4. Statements made by the institution's officers, employees or agents which constitute an express or implicit indication that one or more such persons have engaged or do engage in discrimination on a prohibited basis in any aspect of a credit transaction.

O5. Employee or institutional statements that evidence attitudes based on prohibited basis prejudices or stereotypes.

Note: For risk factors below that are marked with an asterisk, examiners need not attempt to calculate the indicated ratios for racial or national origin characteristics when the institution in not a HMDA reporter. However, consideration should be given in such cases to whether or not such calculations should be made based on gender or racial-ethnic surrogates.

*Indicators of potential **disparate treatment in Underwriting** such as:*

U1. *Substantial disparities among the approval/denial rates for applicants by monitored prohibited basis characteristic (especially within income categories).

U2. *Substantial disparities among the application processing times for applicants by monitored prohibited basis characteristic (especially within denial reason groups).

U3. *Substantially higher proportion of withdrawn/incomplete applications from prohibited basis group applicants than from other applicants.

U4. Vague or unduly subjective underwriting criteria.

U5. Lack of clear guidance on making exceptions to underwriting criteria, including credit scoring overrides.

U6. Lack of clear loan file documentation regarding reasons for any exceptions to normal underwriting standards, including credit scoring overrides.

U7. Relatively high percentages of either exceptions to underwriting criteria or overrides of credit score cutoffs.

U8. Loan officer or broker compensation based on loan volume (especially loans approved per period of time).

U9. Consumer complaints alleging discrimination in loan processing or in approving/denying residential loans.

*Indicators of potential **disparate treatment in Pricing** (interest rates, fees, or points) such as:*

P1. Relationship between loan pricing and compensation of loan officers or brokers.

P2. Presence of broad discretion in pricing or other transaction costs.

P3. Use of a system of risk-based pricing that is not empirically based and statistically sound.

P4. *Substantial disparities among prices being quoted or charged to applicants who differ as to their monitored prohibited basis characteristics.

P5. Consumer complaints alleging discrimination in residential loan pricing.

*Indicators of potential **disparate treatment by Steering** such as:*

S1. For an institution that has one or more sub-prime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared with the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).

S2. Lack of clear, objective standards for (i) referring applicants to subsidiaries or affiliates, (ii) classifying applicants as "prime" or "subprime" borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants.

S3. For an institution that makes both conventional and FHA mortgages, any significant differences in the percentages of prohibited basis group applicants in each of these two loan products, particularly with respect to loan amounts of $100,000 or more.

S4. For an institution that makes both prime and sub-prime loans for the same purpose, any significant differences in percentages of prohibited basis group borrowers in each of the alternative loan product categories.

S5. Consumer complaints alleging discrimination in residential loan pricing.

S6. A lender with a sub-prime mortgage company subsidiary or affiliate integrates loan application processing for both entities, such that steering between the prime and sub-prime products can occur almost seamlessly; *i.e.,* a single loan processor could simultaneously attempt to qualify any applicant, whether to the bank or the mortgage company, under either the bank's prime criteria or the mortgage company's sub-prime criteria.

S7. Loan officers have broad discretion regarding whether to promote conventional or FHA loans, or both, to applicants and the lender has not issued guidelines regarding the exercise of this discretion.

S8. A lender has most of its branches in predominantly white neighborhoods. The lender's subprime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

Indicators of potential ***discriminatory Redlining*** *such as:*

R1. *Significant differences, as revealed in HMDA data, in the number of loans originated in those areas in the lender's market that have relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R2. *Significant differences between approval/denial rates for *all* applicants (minority and nonminority) in areas with relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R3. *Significant differences between denial rates based on insufficient collateral for applicants from areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R4. Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.

R5. Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market and having relatively high concentrations of minority residents.

R6. Policies on receipt and processing of applications, pricing, conditions, or appraisals and valuation, or on any other aspect of providing residential credit that vary between areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R7. Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.

R8. Complaints or other allegations by consumers or community representatives that the lender excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the lender filed with their agency; the CRA public comment file; community contact forms; and the responses to questions about redlining, discrimination, and discouragement of applications, and about meeting the needs of racial or national origin minorities, asked as part of "obtaining local perspectives on the performance of financial lenders" during prior CRA examinations.

Note: Broad allegations or complaints are not, by themselves, sufficient justification to shift the focus of an examination from routine comparative review of applications to redlining analysis. Such a shift should be based on complaints or allegations of specific practices or incidents that are consistent with redlining, along with the existence of other risk factors.

R9. A lender that has most of its branches in predominantly white neighborhoods at the same time that the lender's subprime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

Indicators of potential ***disparate treatment in Marketing*** *of residential products, such as:*

M1.Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.

M2.Advertising only in media serving nonminority areas of the market.

M3.Marketing through brokers or other agents that the lender knows (or has reason to know) would serve only one racial or ethnic group in the market.

M4.Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the lenders assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.

M5.Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products ** that:

- Explicitly exclude groups of prospective borrowers on a prohibited basis; or
- Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution's marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area.

***Note:* Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FHAct. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FHAct.

M6.*Proportion of monitored prohibited basis applicants is significantly lower than that group's representation in the total population of the market area.

M7.Consumer complaints alleging discrimination in advertising or marketing loans.

Step Five: Organize and Focus Residential Risk Analysis

Review the risk factors identified in Step 4 and, for each loan product that displays risk factors, articulate the possible discriminatory effects encountered and organize the examination of those loan products in accordance with the following guidance:

- Where **overt** evidence of discrimination, as described in factors O1-O5, has been found in connection with a product, document those findings as described in Part III, A, besides completing the remainder of the planned examination analysis.
- Where any of the risk factors U1-U9 are present, consider conducting an **underwriting comparative file analysis** as described in Part III, B.
- Where any of the risk factors P1-P5 are present, consider conducting a **pricing comparative file analysis** as described in Part III, C.
- Where any of the risk factors S1-S8 are present, consider conducting a **steering analysis** as described in Part III, D.
- Where any of the risk factors R1-R9 are present, consult agency managers about conducting an analysis for **redlining** as described in Part III, F.
- Where any of the risk factors M1-M7 are present, consult agency managers about conducting a **marketing analysis** as described in Part III, G.
- Where an institution uses age in any **credit scoring system**, consider conducting an examination analysis of that credit scoring system's compliance with the requirements of Regulation B as described in Part III, H.

Step Six: Identify Consumer Lending Discrimination Risk Factors

For credit card, motor vehicle, home equity and other consumer loan products selected in Step One for risk analysis in the current examination cycle, conduct a risk factor review similar to that conducted for residential lending products in Steps Three through Five, above. Consult with agency managers regarding the potential use of surrogates to identify possible prohibited basis group individuals.

Note: The term surrogate in this context refers to any factor related to a loan applicant that potentially identifies that applicant's race, color or other prohibited basis characteristic in instances where no direct evidence of that characteristic is available. Thus, in consumer lending, where monitoring data is generally unavailable, an outwardly Hispanic or Asian surname could constitute a surrogate for an applicant's race or national origin because then examiner can assume that the lender (who can rebut the presumption) perceived the person to be Hispanic. Similarly, an applicant's given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis characteristic may be used as to set up a comparative analysis with nonminority applicants or borrowers.

Using decision rules in Steps three through five, above, for residential lending products, articulate the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step Seven: Analyze Commercial Lending Discrimination Risk

Where an institution does a substantial amount of lending in the commercial lending market, most notably small business loans (and the product has not recently been examined or the underwriting standards have changed since the last examination of the product), the examiner should consider conducting a risk factor review similar to that performed for residential lending products, as feasible, given the limited information available. Such an analysis should generally be limited to determining risk potential based on risk factors U4-U8; P1-P3; R4-R7; and M1-M3.

If the institution makes commercial loans insured by the Small Business Administration (SBA), determine from agency supervisory staff whether SBA loan data (which codes race and other factors) are available for the institution and evaluate those data pursuant to instructions accompanying them.

For large institutions reporting small business loans for CRA purposes and where the institution also voluntarily geocodes loan denials, look for material discrepancies in ratios of approval-to-denial rates for applications in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations.

Articulate the possible discriminatory patterns identified and consider further examining those products determined to have sufficient risk of discriminatory conduct in accordance with the procedures for commercial lending described in Part III, F.

Step Eight: Complete the Scoping Process

To complete the scoping process, the examiner should review the results of the preceding steps and select those focal points that warrant examination, based on the relative risk levels identified above. In order to remain within the agency's resource allowances, the examiner may need to choose a smaller number of Focal Points from among all those selected on the basis of risk. In such instances, set the scope by first, prioritizing focal points on the basis of (i) high number and/or relative severity of risk factors; (ii) high data quality and other factors affecting the likelihood of obtaining reliable examination results; (iii) high loan volume and the likelihood of widespread risk to applicants and borrowers; and (iv) low quality of any compliance program and, second, selecting for examination review as many focal points as resources permit.

Where the judgment process among competing Focal Points is a close call, information learned in the phase of conducting the compliance management review can be used to further refine the examiner's choices.

Part II—Compliance Management Review

The Compliance Management Review enables the examination team to determine:

- The intensity of the current examination based on an evaluation of the compliance management measures employed by an institution.
- The reliability of the institution's practices and procedures for ensuring continued fair lending compliance.

Generally, the review should focus on:

- Determining whether the policies and procedures of the institution enable management to prevent, or to identify and self-correct, illegal disparate treatment in the transactions that relate to the products and issues identified for further analysis under Part I of these procedures.
- Obtaining a thorough understanding of the manner by which management addresses its fair lending responsibilities with respect to (a) the institution's lending practices and standards, (b) training and other application-processing aids, (c) guidance to employees or agents in dealing with customers, and (d) its marketing or other promotion of products and services.

To conduct this review, examiners should consider institutional records and interviews with appropriate management personnel in the lending, compliance, audit, and legal functions. The examiner should also refer to the **Compliance Management Analysis Checklist** contained in the **Appendix** to evaluate the strength of the compliance programs in terms of their capacity to prevent, or to identify and self-correct, fair lending violations in connection with the products or issues selected for analysis. Based on this evaluation:

- Set the intensity of the transaction analysis by minimizing sample sizes within the guidelines established in Part III and the **Sample Size Table** in the **Appendix**, to the extent warranted by the strength and thoroughness of the compliance programs applicable to those Focal Points selected for examination.
- Identify any compliance program or system deficiencies that merit correction or improvement and present these to management in accordance with Part IV of these procedures.

Where an institution performs a self-evaluation or has voluntarily disclosed the report or results of a self-test of any product or issue that is within the scope of the examination and has been selected for analysis pursuant to Part I of these procedures, examiners may streamline the examination, consistent with agency instructions, provided the self-test or self-evaluation meets the requirements set forth in **Streamlining the Examination** located in the **Appendix**.

Part III—Examination Procedures

Once the scope and intensity of the examination have been determined, assess the institution's fair lending performance by applying the appropriate procedures that follow to each of the examination Focal Points already selected.

A. Documenting Overt Evidence of Disparate Treatment

Where the scoping process or any other source identifies overt evidence of disparate treatment, the examiner should assess the nature of the policy or statement and the extent of its impact on affected applicants by conducting the following analysis:

Step 1. Where the indicator(s) of overt discrimination are found in or based on a written policy (for example, a credit scorecard) or communication, determine and document:

a. The precise language of the apparently discriminatory policy or communication and the nature of the fair lending concerns that it raises.